Supreme Court, U.S.
FILED
AUG 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2051

IN THE

Supreme Court of the United States

October Term, 1988

LONGVIEW FIBRE COMPANY,

Petitioner,

vs.

JEANNETTE PAPER COMPANY,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLES P. FALK, ESQUIRE
BASKIN FLAHERTY ELLIOTT
& MANNINO, P.C.
2900 One Mellon Bank Center
500 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 562-8627
Counsel for Respondent
Jeannette Paper Company

Batavia Times Publishing Co.
Harold L. Berkoben
Pittsburgh, Pa. (412) 881-7463

12 pp

TABLE OF CONTENTS.

	Page
Argument	1
I. Petitioner Failed To Preserve Any Constitutional Challenge To The Award Entered Below	1
Conclusion	4
Addenda:	
Table of Contents and Statement of the Questions Involved contained in Brief filed by Longview with the Superior Court of Pennsylvania	1a
Table of Contents of Petition for Allowance of Appeal filed by Longview with the Supreme Court of Pennsylvania	5a

TABLE OF AUTHORITIES.

CASES.

Consumer Party of Pennsylvania v. Commonwealth of Pennsylvania, 510 Pa. 158, 507 A.2d 323 (1986) 2

Dilliplaine v. Lehigh Valley Trust Co., 457 Pa. 255, 322 A.2d 114 (1974) 2

Gerace v. Holmes Protection of Philadelphia, 357 Pa. Super. 467, 516 A.2d 354 (1986), *appeal denied*, 527 A.2d 541 (1987) 2

IN THE

Supreme Court of the United States

October Term, 1988

No. 88-2051

LONGVIEW FIBRE COMPANY,
Petitioner,

vs.

JEANNETTE PAPER COMPANY,
Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Petitioner Failed To Preserve Any Constitutional Challenge To The Award Entered Below

In its Reply Brief to Respondent's Brief in Opposition to Petition for Writ of Certiorari, Petitioner Longview contends that it preserved a constitutional challenge to the punitive damages awarded entered against it. In support, Longview contends that this challenge was preserved before the Superior Court of Pennsylvania, based on a *footnote* contained on page sixty-seven of its seventy page Superior Court brief. Contrary to

Longview's allegations, however, Longview failed to properly raise any constitutional claim. First, Longview failed to raise any constitutional challenge before the trial court, a prerequisite to preserving the issue for review purposes under Pennsylvania law. *See Gerace v. Holmes Protection of Philadelphia*, 357 Pa. Super. 467, 516 A.2d 354 (1986), *appeal denied*, 527 A.2d 541 (1987); *Consumer Party of Pennsylvania v. Commonwealth of Pennsylvania*, 510 Pa. 158, 507 A.2d 323 (1986). *See also Dilliplaine v. Lehigh Valley Trust Co.*, 457 Pa. 255, 322 A.2d 114 (1974). Second, the footnote in question by its terms fails to specifically raise a challenge as to the standards under which the award of punitive damages was assessed, the issue which Longview now seeks to raise. Third, the issues for review by the Superior Court, as framed in Longview's Table of Contents and Statement of the Questions Involved, in no respect raised any constitutional claims whatsoever. To the contrary, the only issue raised by Longview before the Superior Court of Pennsylvania on the subject of punitive damages, as recognized by the Superior Court in its Opinion, was whether Longview's conduct was sufficiently egregious to warrant the imposition of punitive damages (A. 20a). *See also* Table of Contents and Statement of the Questions Involved set forth in Longview's Brief for Appellant, filed with the Superior Court of Pennsylvania on January 24, 1988, appended hereto at 1a-4a.

Since Longview failed to raise any constitutional issues in its Table of Contents or Statement of the Questions Involved, the Superior Court properly directed its Opinion to the issues as framed by Longview. This was particularly appropriate, and in fact required, in view of Longview's failure to have raised any constitutional challenge before the trial court. Nor did Longview

apparently view any such constitutional challenge as being worthy of pursuit, since Longview, in its Petition for Allowance of Appeal filed with the Supreme Court of Pennsylvania, likewise failed to raise any constitutional challenge to the award. *See* Table of Contents of Longview's Petition for Allowance of Appeal, filed with the Supreme Court of Pennsylvania on October 26, 1988, appended hereto at 5a-6a.

Having failed to raise any constitutional challenge to the punitive damages award before the trial court, having failed to properly raise any such challenge in its brief on appeal before the Superior Court of Pennsylvania, and having failed to raise any such challenge in its Petition for Allowance of Appeal, Longview's belated attempt to preserve the issue herein is without merit. To the contrary, as previously noted by Jeannette, no constitutional issues were properly pressed or passed upon below, Longview's failure to properly raise such claims prevented the development of a record for review purposes, and Longview's Petition for Writ of Certiorari should accordingly be denied.

Conclusion

Petitioner has failed to preserve any constitutional challenges to the punitive damages award entered below. Additionally, Longview has failed to raise any constitutional claims of substantive merit, for the reasons set forth in Respondent's initial Brief in Opposition to Petition for Writ of Certiorari. Accordingly, Longview's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CHARLES P. FALK, ESQUIRE
BASKIN FLAHERTY ELLIOTT
& MANNINO, P.C.
2900 One Mellon Bank Center
500 Grant Street
Pittsburgh, Pennsylvania 15219
(412) 562-8627

Counsel for Respondent
Jeannette Paper Company

ADDENDUM

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 01509 PGH 1987

JEANNETTE PAPER COMPANY,
Appellee,

v.

LONGVIEW FIBRE COMPANY,
Appellant.

BRIEF FOR APPELLANT

Appeal from the Order of September 30, 1987
of the Court of Common Pleas of Allegheny
County, Pennsylvania at No. GD 84-20975

Michael J. Betts
REED SMITH SHAW
& McCLAY
435 Sixth Avenue
Mellon Square
Pittsburgh, PA 15219
(412) 288-3010

Attorneys for Appellant,
Longview Fibre Company

TABLE OF CONTENTS.

	Page
STATEMENT OF JURISDICTION	1
ORDER IN QUESTION	1
STATEMENT OF THE QUESTIONS INVOLVED	2
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT	28
ARGUMENT	30
I. THE JUDGMENT OF THE TRIAL COURT ON COUNT ONE SHOULD BE REVERSED, AND JUDGMENT SHOULD BE ENTERED IN LONGVIEW'S FAVOR, BECAUSE OF THE ABSENCE OF MUTUAL ASSENT TO THE ESSENTIAL TERMS OF THE ALLEGED ORAL CONTRACT AND THE ABSENCE OF ANY BASIS FOR DETERMINING WHETHER A BREACH OCCURRED OR FOR AWARDING RELIEF	30
II. THE JUDGMENT OF THE TRIAL COURT ON COUNT ONE SHOULD BE REVERSED, AND JUDGMENT SHOULD BE ENTERED IN LONGVIEW'S FAVOR, BECAUSE THE CONTRACT ALLEGED BY JEANNETTE IS UNENFORCEABLE DUE TO THE ABSENCE OF CONSIDERATION	45
III. THE JUDGMENT OF THE TRIAL COURT ON COUNT ONE SHOULD BE REVERSED, AND JUDGMENT SHOULD BE ENTERED IN LONGVIEW'S FAVOR, BECAUSE THE CONTRACT ALLEGED BY JEANNETTE IS UNENFORCEABLE UNDER THE STATUTE OF FRAUDS	47

IV. THE JUDGMENT OF THE TRIAL COURT ON COUNT TWO SHOULD BE REVERSED, AND JUDGMENT SHOULD BE ENTERED IN LONGVIEW'S FAVOR, BECAUSE JEANNETTE FAILED TO ESTABLISH ITS CLAIM FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS 48

V. THE JUDGMENT OF THE TRIAL COURT SHOULD BE REVERSED AND A NEW TRIAL ORDERED BECAUSE OF PREJUDICIAL ERRORS IN THE TRIAL COURT'S CHARGE TO THE JURY 56

VI. THE AWARD OF PUNITIVE DAMAGES SHOULD BE STRICKEN BECAUSE OF THE ABSENCE OF MALICIOUS, WANTON OR ESPECIALLY EGREGIOUS CONDUCT ON THE PART OF LONGVIEW AND BECAUSE JEANNETTE DID NOT SUFFER ANY COMPENSATORY DAMAGES AS A RESULT OF LONGVIEW'S CONDUCT 66

CONCLUSION 70

Statement of the Questions Involved

1. Where an alleged oral brokerage contract lacks many important terms which have not been discussed by the parties in their single telephone conversation, and the broker alleging the existence of the oral contract has not made any promises or suffered any detriment, is the alleged oral contract unenforceable because of indefiniteness, the absence of mutual assent, the absence of consideration, and the Uniform Commercial Code Statute of Frauds? [answered in the negative by the trial court]

2. Where a broker has represented a manufacturer in connection with past sales to a customer, but has no contract with the customer concerning future sales, and the customer ceases its purchases of the product through the broker because of the product's unacceptable quality, may the broker recover against the customer's new supplier under a theory of intentional interference with contractual relations? [answered in the affirmative by the trial court]

3. Is an award of punitive damages appropriate where there is no evidence of any tortious conduct on the part of the defendant, much less any conduct that was malicious, wanton or especially egregious, and where the plaintiff has suffered no compensatory damages as a result of the defendant's conduct? [answered in the affirmative by the trial court]

IN THE SUPREME COURT
OF PENNSYLVANIA

No. _____

JEANNETTE PAPER COMPANY,
Respondent,

v.

LONGVIEW FIBRE COMPANY,
Petitioner.

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from the Order of September 26, 1988 of the Superior Court of Pennsylvania at No. 1509 Pittsburgh 1987, affirming the Judgment of October 7, 1987 of the Court of Common Pleas of Allegheny County at No. GD 84-20975

Michael J. Betts
REED SMITH SHAW
& McCLAY
Mellon Square
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-3010

Attorneys for Petitioner,
Longview Fibre Company

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
QUESTIONS PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	2
1. Procedural History	2
2. Statement of Facts	4
STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF APPEAL	9
1. The Superior Court's Decision Is Contrary To Decisions Of This Court Because It Permits Recovery For Tortious Interference In The Context Of A Contractual Dispute And It Fails To Require Proof Of The Established Elements Of The Tort	10
2. The Superior Court's Affirmance Of The Punitive Damages Award Is Contrary To Decisions Of This Court Because It Permits The Recovery Of Punitive Damages In A Contractual Dispute Where The Defendant Did Not Intend To Harm The Plaintiff	18
3. The Superior Court's Decision Is Contrary To Numerous Decisions Of This Court Requiring Mutual Assent To The Material And Necessary Details Of The Bargain In Order For There To Be An Enforceable Contract	23
4. The Superior Court's Decision Is Contrary To Precedent Of This Court Holding In A Factual Indistinguishable Situation That There Was An Absence Of Consideration	26
CONCLUSION	28